IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 584/2005

Judgment delivered on: October 29,2007

U.P.S.R.T.C.
through its
Regional Manager, Ghaziabad (U.P.) ..... Appellant.

Through:Mr.Rakesh Sachdeva for the appellant.

versus

Shri Om Prakash & Ors. ..... Respondents.

Through: Mr. S.N. Parashar for the respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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Counsel for the appellant contends that the appellant is primarily aggrieved by the impugned award on account of the fact that the injured in his deposition has duly admitted that he had consumed alcohal in his office before the occurrence of the accident, therefore, the contributory negligence on the part of the injured should have been taken more than 20% and of the appellant less than 80%.

Another contention raised by the counsel for the appellant is that the injured who was an employee of the DVB was not entitled to any medical expenses.

I have heard counsel for the parties and have perused the records.

It is correct that the injured respondent in his cross-examination has admitted that before crossing the road he had consumed alcohal in his office. However, while admitting the said fact of consuming the alcohal,

the respondent injured has categorical stated that he was not under any kind of influence of the liquor and was not unmindful of the traffic while walking on the road, 3-4 feet away from the Patri.

Be that as it may, the case as set up by the appellant before the Tribunal was that the injured was hit by the Maruti Car and not by the bus of the appellant/UPSRTC. It is an admitted case that no police report was lodged against the Maruti Car and even the registration number of the alleged Maruti Car was not known to the driver of the offending vehicle.

The Tribunal in the impugned award has made reference to the deposition of the respondent, his cross-examination as well as cross-examination of R1W1, driver of the offending vehicle and after the elaborate discussion on the said depositions, reached to the conclusion that the driver of the appellant was responsible for hitting the respondent. Perusal of the

award also shows that vehicle of the appellant was duly impounded and a criminal case was registered only against the driver of the offending vehicle. Certified copies of the criminal record were duly produced before the Tribunal and same were exhibited as Ex.PW-4/23-28. Based on the said evidence and the criminal records, the Tribunal gave the finding that presumption can be easily drawn against the driver of the offending vehicle who caused accident due to rash and negligent driving.

'Negligence' is a species of law of torts. Accordingly, negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent man would not do. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence can be either contributory

negligence or composite negligence. In the instance case we are concerned with contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimants part, which is materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of the other's negligence. Whichever party could have avoided the consequence of the other's negligence would be liable for the accident. In the instant case on perusal of the award and after going into the reasoning of the Tribunal, it is clear that the question of contributory negligence does not arise.

The defence set up by the appellant before the Tribunal was that the respondent was hit by one Maruti Car and not by the Bus owned by the appellant. The appellant, however, failed to prove the said defence and made a vain attempt to shift the blame on the respondent. Merely because the respondent had consumed liquor will not necessary lead to an inference that he must have contributed to the accident. In any case, the Tribunal has not completely absolved the respondent and has held him responsible for contributory negligence to the extent of 20%.

I do not find any illegality or perversity in the said finding of the Tribunal.

As regards second contention of the counsel for the appellant with regard to medical expenses, counsel for the respondent submits that the Tribunal has not considered the grant of any medical expenses to the injured and therefore, this plea is not available to the

appellant. The Tribunal has only allowed the compensation against the leave period for which he was denied the salary. The Tribunal in the award has observed that the respondent injured has availed leave of 150 days and on the basis of the same he was found entitled to a sum of Rs. 82,000/- for loss of leave for a period of 13 months and 20 days.

There is no ground to interfere.

Dismissed.

October 29, 2007
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KAILASH GAMBHIR
(JUDGE)